

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CAROL SCHAFFLING	:	CIVIL ACTION
	:	
V.	:	
	:	
DANIEL MCPHILLIPS et al.	:	NO. 22-2968

MEMORANDUM

Bartle, J.

June 13, 2023

This action is a fallout from the 2021 general election for Bucks County Recorder of Deeds. Defendant Daniel McPhillips, a Republican, prevailed over then-incumbent Democrat Robin Robinson. McPhillips terminated plaintiff Carol Schaffling, a registered Democrat, from her position as Second Deputy Recorder of Deeds in early March 2022, two months after he took office, and replaced her with Susan McCracken, a Republican. Schaffling alleges that McPhillips terminated her in violation of her First Amendment rights due to her registration as a Democrat and her support for Robinson's candidacy. Before the court is the motion of defendants McPhillips, the Bucks County Office of the Recorder of Deeds, and the County of Bucks for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure.

I

Under Rule 56 of the Federal Rules of Civil Procedure, summary judgment is appropriate "if the movant shows that there

is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a); see also Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). A factual dispute is genuine if the evidence is such that a reasonable factfinder could return a verdict for the nonmoving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48 (1986). A factual dispute is material if it might affect the outcome of the suit under governing law. Id. at 248.

The court views the facts and draws all inferences in favor of Schaffling, the nonmoving party. See In re Flat Glass Antitrust Litig., 385 F.3d 350, 357 (3d Cir. 2004). “The mere existence of a scintilla of evidence in support of the [nonmoving party]’s position will be insufficient; there must be evidence on which the jury could reasonably find for [that party].” See Anderson, 477 U.S. at 252. “The plaintiff must present affirmative evidence in order to defeat a properly supported motion for summary judgment.” Id. at 257. Such evidence must be admissible. Fed R. Civ. P. 56(c)(2). If a party fails to properly support an assertion of fact or fails to properly address another party’s assertion of fact, the court may consider the fact undisputed for purposes of summary judgment. Fed. R. Civ. P. 56(e).

II

The following facts are undisputed unless otherwise noted. The Bucks County Recorder of Deeds is an elected official charged with recording deeds and collecting real estate transfer taxes in the County. This official administers an office with 24 employees, including the First and Second Deputy Recorders of Deeds.

Plaintiff Carol Schaffling was hired as an assistant office supervisor in the Office of the Recorder of Deeds in February 2018, during Robinson's tenure. Robinson promoted Schaffling to the position of Second Deputy Recorder in October 2021. Schaffling, a registered Democrat, is a longtime personal friend of Robinson. She donated \$1,400 to Robinson's campaign. She also filled out postcards in support of Robinson's candidacy at her home and mailed them to independent voters. According to McPhillips, he was unaware that she was a registered Democrat or that she had supported Robinson's campaign. Her political donation history was listed in publicly available campaign finance records, although McPhillips testified at his deposition that he had not reviewed the records of donations to Robinson. McPhillips also said he was unaware of Schaffling's postcard mailings.

McPhillips was sworn in as the Recorder of Deeds on January 4, 2022. He did not reappoint the person who had served

under Robinson as First Deputy Recorder of Deeds. On the day he took office, he "bonded"--that is, he issued bonds as to employees who handle money that insure against violations of duty--every employee who was responsible for handling money except for Schaffling. He directed Suzanne McCracken, then a senior manager in the office, not to record Schaffling's bond in the office's electronic recording system because "he wanted to wait to swear her in." At the time, McPhillips had not yet communicated with Schaffling. The two first met to discuss Schaffling's job duties on January 10. McPhillips eventually bonded Schaffling on January 14, and her bonding paperwork was filed in the electronic records ten days later.

By virtue of the job duties of the Second Deputy Recorder of Deeds, Schaffling had minimal interaction with McPhillips. Most of their exchanges involved her asking him to sign documents.

McPhillips testified at his deposition that he struggled to "build rapport" with Schaffling. At McPhillips's request, Schaffling attended a Bucks County Board of Commissioners meeting as well as a virtual meeting with an office vendor. According to McPhillips, Schaffling "sat in the meetings with her arms crossed, and her body language [showed] that she did not really want to participate or get involved with it."

McPhillips never issued her any formal discipline nor expressed any dissatisfaction with her performance. At a February 19, 2022 charity event, he told Dianne Magee, a former Solicitor of the Bucks County Recorder of Deeds, that "Carol Schaffling was doing a great job" and "gave . . . no indication that there were any performance issues or any problems at all with [her] work." McCracken also testified that Schaffling had "performed well."

McPhillips terminated Schaffling's employment several weeks later at an afternoon meeting on March 3, 2022. McPhillips told Schaffling that he was "going in a different direction" but did not further elaborate. McPhillips relayed at this meeting that a replacement for Schaffling's position had already been identified but would not disclose who it was. Grace Deon, the Solicitor for the Recorder of Deeds, was also present at the meeting. She stated that plans to terminate Schaffling had "been in the works for several weeks." McPhillips testified at his deposition that he made the decision to terminate Schaffling in "late February" 2022.

The next day after terminating Schaffling, that is, March 4, 2022, McPhillips appointed Suzanne McCracken as Schaffling's replacement. McCracken has worked for Bucks County for twenty years and had previously been a senior office manager in the Office of the Recorder of Deeds. McCracken was a

registered Republican at the time she replaced Schaffling. According to McCracken, she is "not loyal to any particular party." Although she was registered as a Republican prior to 2017, she switched her registration to Democrat that year "to be on a level playing field" because she "knew that [Robinson,] the Recorder of Deeds coming into office[,] was a democrat." In November 2021 she re-registered as Republican so as "not to have any strikes against [her]." McCracken sent an email to McPhillips "welcoming [him] to the office" sometime after the election, but otherwise the two had never met prior to McPhillips assuming office. McPhillips maintains he first learned that she was registered as a Republican after Schaffling initiated this lawsuit.

McPhillips specified that after terminating Schaffling, he posted the position "a few days" later. He said he received multiple applications, including one that McCracken purportedly submitted "through the County website." He also testified that he interviewed McCracken in connection with her application. Ultimately, he asserted that he decided to hire McCracken "within a week" of Schaffling's termination.

This testimony is totally contradicted by other evidence in the record. First, defendants confirmed in a response to a document request that "the Second Deputy position was not posted." Second, McCracken testified that McPhillips

offered her the newly vacant position over a phone call on March 3, 2022, the day of Schaffling's termination. She was not asked to submit an application and did not provide one. Third, cell phone records confirm that shortly before 5 p.m. that day, a ten-minute call was placed from McPhillips's cell phone to McCracken's cell phone. Fourth, as mentioned above, Schaffling testified that McPhillips stated at the March 3 meeting that he had already found her replacement.

There is another critical discrepancy. McPhillips and McCracken both testified that they had not communicated prior to McPhillips taking office, apart from McCracken's sending a welcoming email to McPhillips shortly after the election. However, cell phone records show that calls were placed from McPhillips's cell phone to McCracken's cell phone on December 28 and December 29, 2021 for a combined duration of approximately one hour. McPhillips submits with his reply brief an affidavit in which he asserts that he "forgot" about these phone calls while testifying at his deposition and that the "sole topic of the two conversations . . . was regarding the [electronic recording] software system" used by the office.

III

Schaffling alleges that McPhillips violated her First Amendment rights in violation of 42 U.S.C. § 1983 by terminating her employment due to her political party affiliation as a

Democrat and her support for Robinson's campaign.¹ The First Amendment prohibits a public agency from discharging employees based on their political affiliation if the employees serve in positions that are "neither policymaking nor advisory." Goodman v. Pa. Tpk. Comm'n, 293 F.3d 655, 663 (3d Cir. 2002) (citing Branti v. Finkel, 445 U.S. 507, 514-15 (1980)).

Our Court of Appeals has established a burden-shifting analysis to address allegations that a public employee was terminated based on his or her political affiliation. A plaintiff must first establish a prima facie case by supplying proof of three elements: "(1) that the employee works for a public agency in a position that does not require a political affiliation; (2) that the employee engaged in a constitutionally protected activity; and (3) that the employee's political affiliation was a substantial or motivating factor in the adverse employment decision." Id. at 663-64. If the plaintiff establishes a prima facie case, the burden shifts to the defendant to prove that it would have taken the same employment action "even in the absence of the protected affiliation." Id. at 664.

1. Schaffling initially asserted in her complaint that defendants were liable under Pennsylvania common law for wrongful termination. The parties have since stipulated to dismiss that claim.

Defendants move for summary judgment solely on the ground that Schaffling has not established the third element of her prima facie case. They assert that the undisputed material facts demonstrate that Schaffling has not shown that McPhillips had knowledge of her political affiliation as a Democrat. They also contend that Schaffling cannot show that she was discriminated against based on her assistance with Robinson's 2021 general election campaign.

To establish that an employee's political affiliation or protected political activities were the substantial or motivating factors in her termination, the employee must produce evidence showing that the defendant knew of the plaintiff's political persuasion. Id. Said knowledge can be established through direct or circumstantial evidence. E.g., Montone v. City of Jersey City, 709 F.3d 181, 192 (3d Cir. 2013) (citing Goodman, 293 F.3d at 674).

There is no direct evidence that McPhillips was aware that Schaffling was a Democrat or supported Robinson's reelection campaign. However, Schaffling contends that there is sufficient circumstantial evidence from which a jury could infer that McPhillips had knowledge of these facts. Viewing the facts in the light most favorable to Schaffling, the court agrees.

The week before McPhillips took office, he had two phone conversations for a total duration of approximately an

hour with McCracken, Schaffling's replacement, who had recently switched her registration to Republican so as "not to have any strikes against [her]." McPhillips insists that these phone calls were only about the logistics of using the office's electronic recording system. A juror could infer otherwise, especially given the other discrepancies between McPhillips's testimony and the other evidence in the record.

At the same time, McPhillips approved the bonding paperwork on January 4, 2022 for every other recorder in his office except for Schaffling. He said he was doing this because he "wanted to wait" to swear Schaffling in. He made the decision to hold off on bonding Schaffling six days before he personally met with her. The recording of Schaffling's bonding paperwork in the electronic recording system was delayed for three weeks after every other recorder's paperwork was recorded. Furthermore, a juror could reasonably find McPhillips's reason for terminating Schaffling--that he was "going in a different direction"--was not true given the evidence showing that Schaffling had been satisfactorily performing her job duties. Moreover, despite McPhillips's deposition testimony to the contrary, he did not publicly post the Second Deputy position after terminating Schaffling. Instead, on the same day he terminated Schaffling, he informed McCracken that he would be appointing her to the Second Deputy role. Finally, the court

notes that the Office of the Recorder of Deeds is a small office with only 24 total employees. This fact supports an inference that others in the office were aware that Schaffling and Robinson were allied, and that McPhillips learned of that fact from someone else in the office. McPhillips testified that he was unaware of Schaffling's political history, but a juror could choose to discredit that testimony.

On the totality of the circumstances, there are genuine disputes of material facts. There are sufficient facts from which a juror could conclude that McPhillips was aware of Schaffling's registration as a Democrat and support for Robinson's campaign and that these were motivating factors in his decision to terminate her. Accordingly, the motion of defendants Daniel McPhillips, the Bucks County Office of the Recorder of Deeds, and the County of Bucks for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure will be denied.